Attachment A – ACL Complaint No. R5-2015-0520
Specific Factors Considered for Administrative Civil Liability
Storm Water Discharges from Assessor Parcel 041-300-035-000

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

VIOLATION 1 - STORM WATER DISCHARGES FROM LOWER TERRACE & ACCESS ROAD TO UNNAMED TRIBUTARIES OF DOBY CREEK

Step 1 – Potential for Harm for Discharge Violations

The "potential harm to beneficial uses" factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.
This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses ranges from negligible (0) to major (5).

The designated beneficial uses of Cottonwood Creek that could be impacted by the unauthorized discharge include Municipal and Domestic Supply; Agricultural Supply; Water Contact Recreation; Noncontact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Migration of Aquatic Organisms; Spawning; and Wildlife Habitat. Storm water from Assessor Parcel 041-300-035-000 (hereafter referred to as the "Site") discharged to unnamed tributaries of Doby Creek, which is a tributary of North Fork Cottonwood Creek, which is a major tributary of Cottonwood Creek. Beneficial uses of any specifically identified water body generally apply to all of its tributaries. Spawning, warm, and cold freshwater habitats were the beneficial uses most obviously affected by storm water discharges from the Site. Storm water discharges occurred on at least seven days, but likely more, during the period between 19 November 2013 and 29 October 2014. Fine sediments from discharges were observed in the unnamed tributaries on and adjacent to the Site during the 28 October 2014 inspection and the 19 November 2014 inspection.

The observed harm to beneficial uses was determined to be "Moderate" which is defined as "moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects)." A score of 3 is assigned for this factor.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.
A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. "Potential receptors" are those identified considering human, environmental, and ecosystem exposure pathways.

Streams immediately downstream of the discharge points were significantly affected by increased siltation, turbidity, and fines in the stream substrate. Discharges from the Site are deleterious to aquatic life and may cause a chronic impact due to habitat degradation.

The discharged material posed a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection). A score of 2 was assigned for this factor.

Factor 3: Susceptibility to Cleanup or Abatement.
A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger.

Less than 50% of the discharges from the Site are susceptible to cleanup or abatement, as the discharges entered unnamed tributaries of North Fork Cottonwood Creek and are no longer on Site. Therefore, a factor of 1 is assigned.

Final Score – "Potential for Harm"
The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, **a final score of 6** was calculated. The total score is then used in Step 2, below.

Step 2 – Assessment for Discharge Violations
This step addresses administrative civil liabilities for the spills based on both a per-gallon and a per-day basis.

1. Per Gallon Assessments for Discharge Violations
When there is a discharge, the Board is to determine an initial liability amount on a per gallon basis, using the Potential for Harm score and the extent of Deviation from Requirement of the violation. The Potential for Harm Score was determined above, and is 6.

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, etc.) that was violated. For this discharge, the Deviation from Requirement is considered **"Major"** because the Discharger did not comply with the Water Code requirement to apply for a permit before discharging pollutants to waters of the U.S.

Table 1 of the Enforcement Policy (p. 14) is used to determine a "per gallon factor" based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is **0.22**. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below.

For the penalty calculation, Staff used a highly conservative estimate of 56,456 gallons for the volume of discharge. The following paragraphs describe how the volume was determined.

Using the USDA Natural Resources Conservation Service - Conservation Engineering Division Technical Release 55 Method (USDA TR-55 Method) and based on characteristics of the site (Newly graded area with no vegetation, Hydrologic Soil Group B) Staff determined that precipitation events greater than 1/3 of an inch over 24 hours would generate runoff from the Site. Using precipitation data from a Dept. of Water Resources/Flood Management gauging station (OGO Ranger Station) located approximately 5 miles southwest of the Site, Staff identified seven days with more than 2/3 of an inch of precipitation over a 24 hour period, between 19 November 2013 and 29 March 2014. Staff used 2/3 of an inch, twice the amount calculated to generate runoff (1/3 of an inch), to be highly conservative in developing storm water discharge volumes.

During the 28 October 2014 inspection Staff noted two locations where the majority of storm water runoff from graded surfaces on the Site discharged to the unnamed tributaries of North Fork Cottonwood Creek. The first storm water runoff discharge location was in the northwest corner of the Lower Terrace (Attachment D - 28 October 2014 Baker Ridge Inspection Report, Appendix A, Way Point 100). The Lower Terrace was void of vegetation and had a surface area of approximately 30,000 square feet. Storm water runoff from the Lower Terrace surface discharges at the before mentioned location in the northwest corner.

The second storm water runoff discharge location noted by Staff during the 28 October 2014 inspection was on the upstream side of the watercourse crossing located at the entrance to the Site (Attachment D - 28 October 2014 Baker Ridge Inspection Report, Appendix A, Way Point 118). Storm water runoff from the Access Road, which is approximately 1,000 feet long, 12-16 feet wide, and has a surface area of an approximately 14,000 square feet, flows via an inside ditch to the before mentioned discharge location on the upstream side of the watercourse crossing, where it discharged to an unnamed tributary of North Fork Cottonwood Creek. Prior to the 28 October 2014 inspection, there were no Erosion Control / Storm Water Best Management Practices implemented to reduce erosion and storm water discharge from the Site at the two before mentioned discharge locations.

The first of the seven days where storm water runoff discharged from the Site occurred on 19 November 2013. A total of 0.76 inches of precipitation was recorded at the OGO Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 1,711 gallons of storm water discharged from the Lower Terrace and 799 gallons from the Access Road.

The second of the seven days where storm water runoff discharged from the Site occurred on 8 February 2014. A total of 0.96 inches of precipitation was recorded at the OGO Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 3,327 gallons of storm water discharged from the Lower Terrace and 1,553 gallons from the Access Road.

The third of the seven days where storm water runoff discharged from the Site occurred on 9 February 2014. A total of 0.8 inches of precipitation was recorded at the OGO

Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 2,002 gallons of storm water discharged from the Lower Terrace and 934 gallons from the Access Road.

The fourth of the seven days where storm water runoff discharged from the Site occurred on 26 February 2014. A total of 1.24 inches of precipitation was recorded at the OGO Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 6,151 gallons of storm water discharged from the Lower Terrace and 2,870 gallons from the Access Road.

The fifth of the seven days where storm water runoff discharged from the Site occurred on 3 March 2014. A total of 1.88 inches of precipitation was recorded at the OGO Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 14,199 gallons of storm water discharged from the Lower Terrace and 6,626 gallons from the Access Road on 3 March 2014.

The sixth of the seven days where storm water runoff discharged from the Site occurred on 5 March 2014. A total of 0.88 inches of precipitation was recorded at the OGO Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 2,634 gallons of storm water discharged from the Lower Terrace and 1,229 gallons from the Access Road.

The last of the six precipitation events where storm water runoff discharged from the Site occurred on 28 March 2014. A total of 1.44 inches of precipitation was recorded at the OGO Ranger Station on this date. Using the USDA TR-55 method Staff calculated that 8,469 gallons of storm water discharged from the Lower Terrace and 3,952 gallons from the Access Road.

For the purposes of the penalty calculation, Staff is using a discharge volume of 56,456 gallons (of this amount, 49,456 gallons subject to penalties as described below). The maximum civil liability allowed under Water Code section 13385 is $10 per gallon discharged. The Per Gallon Assessment is calculated as (0.22 factor from Table 1) x (49,456 gallons) x ($10 per gallon). The value is **$108,800**.

Discharge Event	**Dates**	**Total Runoff Volume from Lower Terrace** (gallons)	**Total Runoff Volume from Access Road** (gallons)	**Total Runoff** (gallons)	**Total Subject to Penalties** (Volume – 1,000 gallons)*	**Days of Violation Subject to Penalties**
#1	19 Nov 2013	1,711	799	2,510	1,510	1
#2	8 Feb 2014	3,327	1,553	4,880	3,880	1
#3	9 Feb 2014	2,002	934	2,936	1,936	1
#4	26 Feb 2014	6,151	2,870	9,021	8,021	1
#5	3 March 2014	14,199	6,626	20,825	19,825	1
#6	5 March 2014	2,634	1,229	3,863	2,863	1
#7	28 March 2014	8,469	3,952	12,421	11,421	1
	Total	**38,493**	**17,963**	**56,456**	**49,456**	**7**
Per Water Code						

2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm factor score (6) and the extent of Deviation from Requirement (Major) that were used in the per-gallon analysis. The "per day" factor (determined from Table 2 of the Enforcement Policy) is **0.22**.

The discharges that are the subject of this enforcement action occurred on at least seven different days. Therefore, the Per Day Assessment is calculated as (0.22 factor from Table 2) x (7 days) x ($10,000 per day). The value is **$15,400**.

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment. For this case, the total is $108,800 + $15,400 for a total initial liability amount of **$124,200**.

Step 3 – Per Day Assessment for Non-Discharge Violation

The Enforcement Policy states that the Board shall calculate an initial liability for each non-discharge violation. In this case, this factor does not apply because all of the violations are related to the discharge from the Site, and the liability was determined in Step 2.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Dischargers were given a multiplier value of **1.5** because the Dischargers did not comply with the Water Code requirement to apply for a permit before discharging pollutants to waters of the U.S. and were knowledgeable of that requirement. In addition staff believes that negligence was involved because the Discharger failed to exercise a degree of care which a reasonable person would exercise under similar circumstances.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Dischargers have cooperated with the investigation thus far and have implemented some Best Management Practices since the 28 October 2014 inspection to reduce the amount of sediment and fill material that continues to discharge from the Site. Therefore, the Dischargers were given a multiplier value of **0.75**.

History of Violation
When there is a history of repeat violations, the Enforcement Policy indicates a minimum multiplier of 1.1 to be used. The Dischargers do not have a history of violations with the Central Valley Water Board. Therefore, the History of Violation factor is **1.0**.

Step 5 - Determination of Total Base Liability Amount
The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Total Base Liability Amount: This value is calculated as the Initial Liability Amount ($124,200) x Adjustment Factors (1.5) (0.75) (1) and is equal to **$139,700**.

Step 6 - Ability to Pay and Ability to Continue in Business
The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. The Dischargers have an ability to pay the total base liability amount proposed for Violation 1 based on the fact that the Dischargers own real property that collectively is worth in excess of the total base liability amount for Violation 1. Furthermore, Axner Construction, Inc., is a for profit business that generates income and owns assets. Based on this information, the total base liability amount for Violation 1 was not adjusted for the Dischargers' ability to pay.

Step 7 – Other Factors as Justice May Require
If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

Step 8 – Economic Benefit
Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Dischargers benefited economically by not enrolling and complying with the State of California's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ (NPDES No. CAS000002). To comply with this order the Dischargers would have had to pay an annual Construction Stormwater Program fee, hired a Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD) to develop a SWPPP for construction and land disturbance activities on the Site, implement erosion and sediment control best management practices (BMPs) in accordance with the SWPPP, and hired a Qualified SWPPP Practitioner (QSP) to inspect those BMPs, monitor the Site and storm water discharges from the Site, take corrective actions when needed, and write and submit monitoring reports to the Central Valley Water Board.

The annual Construction Stormwater Program fee for fiscal year 2013-14 for the construction and land disturbance activities the dischargers conducted on the Site is $715. This is considered an avoided cost because the Dischargers cannot retroactively enroll in the Construction Stormwater Program. The estimated cost to have a QSD develop a SWPPP for the Site and to have a QSP to inspect and monitor the site as needed to comply with the SWPPP and the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities during fiscal year 2013-14 is $5,100. This is considered an avoided

cost as the Dischargers cannot retroactively have a SWPPP developed, inspected, or monitored. The estimated cost to implement erosion and sediment control BMPs for the construction and land disturbance activities conducted by the Dischargers in 2013 is $66,463. This is considered a delayed cost as the Dischargers will have to implement erosion and sediment control BMPs in compliance with Cleanup and Abatement Order R5-2015-0701.

The Dischargers economic benefit for noncompliance with the Construction Storm Water General Permit is calculated from the delayed and avoided costs listed above using the USEPA's BEN computer program, and is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. The total Benefit of Noncompliance to the Dischargers in regards to this violation is calculated to be $8,912.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." Therefore, the economic benefit is estimated to be **$9,803**, which becomes the minimum civil liability which must be assessed pursuant to section 13385.

Step 9 – Maximum and Minimum Liability Amounts
The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: $564,540
Minimum Liability Amount: $9,803

Step 10 – Final Proposed Liability Amount for Violation 1

Based on the foregoing analysis, and consistent with the Enforcement policy, ***the final liability amount proposed for Violation 1 is $139,700.***

VIOLATION 2- DISCHARGES OF FILL MATERIAL TO UNNAMED TRIBUTARIES OF DOBY & DUCKET CREEKS

Step 1 – Potential for Harm for Discharge Violations
The "potential harm to beneficial uses" factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.
This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for

harm to beneficial uses ranges from negligible (0) to major (5).

The designated beneficial uses of Cottonwood Creek that could be impacted by the unauthorized discharge include Municipal and Domestic Supply; Agricultural Supply; Water Contact Recreation; Noncontact Water Recreation; Warm Freshwater Habitat; Cold Freshwater Habitat; Migration of Aquatic Organisms; Spawning; and Wildlife Habitat. The discharger(s) placed 8,520 cubic feet of fill in unnamed tributaries of Doby and Ducket Creeks, which are tributaries of North Fork Cottonwood Creek, which is a major tributary of Cottonwood Creek. Beneficial uses of any specifically identified water body generally apply to all of its tributaries. The fill material was observed in the unnamed tributaries on Assessor Parcel 041-300-035-000 (hereafter referred to as the "Site") during the 28 October 2014 inspection and the 19 November 2014 inspection.

The observed harm to beneficial uses was determined to be "Above Moderate" which is defined as "more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), human or ecological health concerns)." A score of 4 is assigned for this factor.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.
A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. "Potential receptors" are those identified considering human, environmental, and ecosystem exposure pathways.

Streams immediately downstream of where fill material was discharged were significantly affected by increased siltation, turbidity, and fines in the stream substrate. Discharges from the Site are deleterious to aquatic life and may cause a chronic impact due to habitat degradation.

The discharged material posed a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection). A score of 2 was assigned for this factor.

Factor 3: Susceptibility to Cleanup or Abatement.
A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger.

More than 50% of the discharged fill material on the Site is susceptible to cleanup or abatement. Therefore, a factor of 0 is assigned.

Final Score – "Potential for Harm"
The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, **a final score of 6** was calculated. The total score is then used in Step 2, below.

Step 2 – Assessment for Discharge Violations

This step addresses administrative civil liabilities for the spills based on both a per-gallon and a per-day basis.

1. Per Gallon Assessments for Discharge Violations

When there is a discharge, the Board is to determine an initial liability amount on a per gallon basis, using the Potential for Harm score and the extent of Deviation from Requirement of the violation. The Potential for Harm Score was determined above, and is 6.

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, etc.) that was violated. For this discharge, the Deviation from Requirement is considered **"Major"** because the Discharger did not comply with the Water Code requirement to apply for a permit before discharging pollutants to waters of the U.S.

Table 1 of the Enforcement Policy (p. 14) is used to determine a "per gallon factor" based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is **0.22**. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below. For the penalty calculation, Staff used a conservative estimate of 63,730 gallons for the volume of fill material discharged.

For the purposes of the penalty calculation, Staff is using a discharge volume of 63,730 gallons (of this amount, 61,730 gallons subject to penalties as described below). The maximum civil liability allowed under Water Code section 13385 is $10 per gallon discharged. The Per Gallon Assessment is calculated as (0.22 factor from Table 1) x (61,730 gallons) x ($10 per gallon). The value is **$135,800**.

> Fill material was discharged to unnamed tributaries on Site at two locations. At both locations fill material was discharged to construct an unculverted non-armored watercourse crossing. At the first location (Way Point 1, 19 November 2014 Baker Ridge Inspection Report) more than 3,840 cubic feet, or 28,725 gallons, of fill material was discharged to an unnamed tributary of Doby Creek. At the second location (Way Point 2, 19 November 2014 Baker Ridge Inspection Report) more than 4,680 cubic feet, or 35,005 gallons, of fill material was discharged to an unnamed tributary of Ducket Creek.

2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm factor score (6) and the extent of Deviation from Requirement (Major) that were used in the per-gallon analysis. The "per day" factor (determined from Table 2 of the Enforcement Policy) is **0.22**.

The two watercourse crossings most likely were constructed on at least two separate days. Therefore, the discharges that are the subject of this enforcement action occurred on at least two different days. Therefore, the Per Day Assessment is calculated as (0.22 factor from Table 2) x (2 days) x ($10,000 per day). The value is **$4,400**.

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment. For this case, the total is $135,800 + $4,400 for a total initial liability amount of **$140,200**.

Step 3 – Per Day Assessment for Non-Discharge Violation

The Enforcement Policy states that the Board shall calculate an initial liability for each non-discharge violation. In this case, this factor does not apply because all of the violations are related to the discharge from the Site, and the liability was determined in Step 2.

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Dischargers were given a multiplier value of **1.5**because the Dischargers did not comply with the Water Code requirement to apply for a permit before discharging pollutants to waters of the U.S. In addition staff believes that negligence was involved because the Discharger failed to exercise a degree of care which a reasonable person would exercise under similar circumstances.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Dischargers have cooperated with the investigation and have implemented some Best Management Practices since the 28 October 2014 inspection to reduce the amount of sediment and fill material that continues to discharge from the Site. Therefore, the Dischargers were given a multiplier value of **0.75**.

History of Violation

When there is a history of repeat violations, the Enforcement Policy indicates a minimum multiplier of 1.1 to be used. The Dischargers do not have a history of violations with the Central Valley Water Board. Therefore, the History of Violation factor is **1.0**.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

Total Base Liability Amount: This value is calculated as the Initial Liability Amount ($140,200) x Adjustment Factors (1) (0.75) (1) and is equal to **$157,700**.

Step 6 - Ability to Pay and Ability to Continue in Business

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. Mr. Cordes has an ability to pay the total base liability amount proposed for Violation 2 based on the fact that the he owns real property in California and Texas with tax assessor values in excess of $280,000. It is also unknown at this time what other sources of income and/or assets are available to Mr. Cortes and it is presumed that the other Dischargers will pay some portion of the liability imposed for Violation 1. Based on this information, the total base liability amount for Violation 2 was not adjusted for the Dischargers' ability to pay.

Step 7 – Other Factors as Justice May Require

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

Step 8 – Economic Benefit

Pursuant to CWC section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Dischargers benefited economically by not enrolling and complying with the State of California's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ (NPDES No. CAS000002) and for not obtaining a Clean Water Act Section 404 Permit or 401 Water Quality Certification for dredged and fill materials.

To comply with the General Construction Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities order the Discharger would have had to pay an annual Construction Stormwater Program fee, hired a Qualified Storm Water Pollution Prevention Plan (SWPPP) Developer (QSD) to develop a SWPPP for construction and land disturbance activities on the Site, implement erosion and sediment control best management practices (BMPs) in accordance with the SWPPP, and hired a Qualified SWPPP Practitioner (QSP) to inspect those BMPs, monitor the Site and storm water discharges from the Site, take corrective actions when needed, and write and submit monitoring reports to the Central Valley Water Board. To obtain a Clean Water Act Section 401 Water Quality Certification the Discharger would have had to submit an application and application fee.

The annual Construction Stormwater Program fee for fiscal year 2014-15 for the construction and land disturbance activities the dischargers conducted on the Site is $745. This is considered an avoided cost because the Discharger cannot retroactively enroll in the Construction Stormwater Program. The estimated cost to have a QSD develop a SWPPP for the Site and to have a QSP to inspect and monitor the site as needed to comply with the SWPPP and the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities during fiscal year 2014-15 is $6,600. This is considered an avoided cost as the Discharger cannot retroactively have a SWPPP developed, inspected, or monitored. The estimated cost to implement erosion and sediment control BMPs for the construction and land disturbance activities conducted by the Dischargers in 2013 is $30,296. This is considered a delayed cost as the Discharger will have to implement erosion and

sediment control BMPs in compliance with Cleanup and Abatement Order R5-2015-0701. The cost to obtain a Section 401 Water Quality Certification in 2014 is $1097.

The Dischargers economic benefit for noncompliance with the Construction Storm Water General Permit is calculated from the delayed and avoided costs listed above using the USEPA's BEN computer program, and is equal to the present value of the avoided costs plus the "interest" on delayed costs. This calculation reflects the fact that the discharger has had the use of the money that should have been used to avoid the instance of noncompliance. The total Benefit of Noncompliance to the Dischargers in regards to this violation is calculated to be $10,102.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." Therefore, the economic benefit is estimated to be **$11,112**, which becomes the minimum civil liability which must be assessed pursuant to section 13385.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: $637,300
Minimum Liability Amount: $11,112

Step 10 – Final Liability Amount for Violation 2

Based on the foregoing analysis, and consistent with the Enforcement policy, the final liability amount proposed for Violation 2 is $157,700.

Total Combined Liability Amount

The final liability amounts for Violation 1 and Violation 2 discussed above consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed combined Administrative Civil Liability is **$297,400** (consisting of Christopher Cordes, Eddie Axner and Eddie Axner Construction, Inc. being joint and severally liable for **$139,700** and Christopher Cordes being individually liable for an additional **$157,700**).